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No. 269

In the Supreme Court of the United States

OCTOBER TERM, 1929

ROBERT G. MEADOWS, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS OF THE COURT BELOW

The opinion of the Circuit Court of Appeals on the jurisdictional question is reported in 32 F. (2d) 440. (R. 82–85.) Its opinion in the matter of striking out the Government's Bill of Exceptions is reported in 29 F. (2d) 739. (R. 80–81.) The District Court delivered no formal opinion; the judge's oral opinion appears in the record at page 46.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 21, 1929; rehearing was denied May 28, 1929. (R. 85–87.) The petition for certiorari was filed July 29, 1929. The jurisdiction of

this Court is invoked under Section 240 (a), Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Is a disagreement as to a claim for reinstatement of lapsed war risk insurance, as authorized by a statute enacted after the insurance had lapsed, to be considered a "disagreement as to claim *under a contract of insurance,*" within the meaning of Section 19, World War Veterans' Act, permitting suit in such cases?

2. If so, is the requirement that the applicant submit "proof satisfactory to the director showing * * * that the applicant is not totally and permanently disabled" satisfied merely by proving in the District Court that he was not so disabled?

3. Were the allegations in the petition in the District Court that the Director had acted "erroneously and contrary to the terms of War Risk Insurance Act, and amendments thereto," sufficient to invoke the jurisdiction of the District Court to review decisions "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious," in accordance with the rule laid down by this Court?

THE STATUTES INVOLVED

Section 2, Act of August 9, 1921, c. 57, 42 Stat. 147, 148, "An Act to establish a Veterans' Bureau * * * and further to amend and modify the War Risk Insurance Act" (this has now become,

with modifications, Section 5, World War Veterans' Act, 1924, U. S. C., Title 38, Sec. 426):

> The director, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this Act, and for that purpose shall have full power and authority to make rules and regulations not inconsistent with the provisions of this Act, which are necessary or appropriate to carry out its purposes and shall decide all questions arising under this Act except as otherwise provided herein.

Section 19, World War Veterans' Act, 1924, as amended June 7, 1924, c. 320, 43 Stat. 607, 612, and March 4, 1925, c. 553, 43 Stat. 1302 (U. S. C., Title 38, Sec. 445):

> In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. * * *

Section 408, War Risk Insurance Act, added by Sec. 27, Act of August 9, 1921, 42 Stat. 156, *supra* (this has now become, with modifications, Sec. 304, World War Veterans' Act, 1924, U. S. C., Title 38, Sec. 515):

In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with, an application for reinstatement of lapsed or canceled yearly renewable term insurance or application for United States Government life insurance (converted insurance) hereafter made may be approved: *Provided,* That the applicant's disability is the result of an injury or disease or of an aggravation thereof suffered or contracted in the active military or naval service during the World War: *Provided further,* That the applicant during his lifetime submits proof satisfactory to the director showing the service origin of the disability or aggravation thereof and that the applicant is not totally and permanently disabled. As a condition, however, to the acceptance of an application for the reinstatement of lapsed or canceled yearly renewable term insurance or United States Government life insurance (converted insurance) the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum compounded annually on each premium from the date said premium is due by the terms of the policy: *Provided further,* That where any soldier has heretofore allowed his insurance to lapse, while suffering from wounds or disease suffered or contracted in line of service, and was at the time he allowed his said policy to

lapse entitled to compensation on account thereof in a sum equal to or in excess of the amount due from him in premiums on his said insurance, and has since died from said wounds or disease without collecting or making claim for said compensation, or being allowed to reinstate his said policy on account of his physical condition, then and in that event said policy shall not be considered as lapsed, and the Veterans' Bureau is hereby authorized and directed to pay to the beneficiaries of said soldier under said policy the amount of said insurance less the premiums and interest thereon at 5 per centum per annum compounded annually in installments as provided by law.

STATEMENT

This is an action at law, instituted by the petitioner (the insured) in the District Court for the District of Colorado, to require the United States to reinstate lapsed insurance in accordance with the provisions of Section 408, War Risk Insurance Act, and to pay benefits under the policy at the rate of $40.25 per month from August 3, 1923, as for total permanent disability existing since that time. (R. 4–6.)

A policy in the amount of $10,000 was issued upon the petitioner's life while he was serving in the Army during the World War. On February 1, 1920, he converted $3,000 of the insurance into a twenty-payment life policy and allowed the remaining $7,000 to lapse. On February 21, 1923, he made application for reinstatement and conver-

sion of the lapsed insurance, under Section 408, which had been added to the War Risk Insurance Act by the Act of August 9, 1921, *supra*. (R. 5.)

The petition, filed in the District Court, alleged that when making such application for reinstatement the petitioner tendered the necessary premiums and interest, "complied with any and all the terms" of the statutes, rules, and regulations, and was suffering from a disability (pulmonary tuberculosis) "of a degree less than permanent and total disability," but that "the defendant erroneously and contrary to the terms of the War Risk Insurance Act, and amendments thereto, rejected and refused the plaintiff's application."

It is conceded that the petitioner complied with all requirements of the statute except that he failed to prove to the satisfaction of the Director that the disability from which he was *then* (February 21, 1923) suffering was less than total and permanent. (R. 7.)

A jury having been waived in writing, the trial court heard evidence offered by the petitioner. The Government offered no evidence. The court decided in favor of the petitioner. (R. 11–12.) It did not appear what proof was submitted to the Director. (R. 47.)

The cause went to the Circuit Court of Appeals upon writ of error. The Government's bill of exceptions was there stricken from the record because

not settled within the time permitted. 29 F. (2d.) 739. (R. 80–81.)

Later, considering the cause as before it "only on the record proper," the Circuit Court of Appeals concluded that the trial court had been without jurisdiction because (1) there was no sufficient allegation that the action of the Director had been "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious," within the rule laid down by this Court, and (2) the matter could not be considered as one of "disagreement as to claim under a contract of insurance," within the meaning of Section 19, World War Veterans' Act, 1924. It accordingly reversed the judgment of the District Court and ordered the dismissal of the petition for lack of jurisdiction. 32 F. (2d) 440. (R. 82–86.)

ARGUMENT

I

IS A DISAGREEMENT AS TO A CLAIM FOR REINSTATEMENT OF LAPSED WAR RISK INSURANCE A "DISAGREEMENT AS TO CLAIM UNDER A CONTRACT OF INSURANCE" WITHIN THE MEANING OF SECTION 19?

It is true that at the time of petitioner's application for reinstatement there was an earlier contract which had lapsed. Petitioner argues that when a contract is reinstated there is no new contract but that "a right is exercised which is given by, and enforceable under, the original insurance contract"

and that "the claim to such a right is a claim under a contract of insurance." (P. 16 of brief.) Petitioner in his brief says that he knows of no Federal decision bearing directly on the question presented here. (P. 17 of brief.) The Circuit Court of Appeals in the instant case said (R. 84, 85):

> * * * Here, the claim is not under a contract of insurance but the claim is to have insurance reinstated, which plaintiff himself alleges has lapsed. While such a reinstated contract of insurance is connected with and, in a sense, based upon the earlier contract of insurance, yet, that earlier contract has ceased to have existence and validity and the contract, if reinstated, becomes a new contract. Judge Van Valkenburgh, speaking for this court, in *Stevens* v. *United States* (opinion filed December 14, 1928), stated, in speaking of a similar reinstated contract, that "the reinstatement made brought into existence a new contract between the parties." Therefore, a claim to a right to reinstate such a contract of insurance which has lapsed is not a "claim under contract of insurance between the Bureau and any person or persons claiming thereunder," within the meaning of Section 19.

Stevens v. *United States* is reported in 29 F. (2d) 904. See also *United States* v. *Buzard* (C. C. A. 9th), 33 F. (2d) 883; *United States* v. *Allen* (C. C. A. 9th), 33 F. (2d) 888.

Petitioner relies upon cases holding that certain commercial policies of life insurance made in pur-

suance of the provisions of earlier policies are to be governed by the law applicable to the earlier contract. None of these was a case of war risk insurance and none of them involved any statutory provisions similar to that quoted above. *Aetna Life Insurance Company* v. *Dunken,* 266 U. S. 389, is the case chiefly relied upon by petitioner. In that case this Court said (p. 399):

> * * * By those provisions, upon the simple application of the insured, the new policy must issue. *Nothing was left to future agreement.* The terms of the new policy were fixed when the original policy was made. (Italics ours.)

Petitioner's contract contained no such provisions, but, on the contrary, there was something definite left for future agreement, and that was whether or not this petitioner satisfied the Director of his insurability.

We do not dispute the contention of the petitioner that the original certificate of insurance is subject to "changes in the law no less than changes in the regulations" in accordance with the holding of this Court in *White* v. *United States,* 270 U. S. 175, 180. Neither do we deny that the rights of the parties "are to be ascertained from the terms of their contract" as was said in *Jensen* v. *United States,* 29 F. (2d) 951, 952, cited by the petitioner. The ultimate holding in that case was, however, reversed by the Circuit Court of Appeals for the

Ninth Circuit on November 12, 1929, that court saying:

> The sole question presented by the appeals * * * is whether or not these policies became incontestable where a total loss occurred within six months after the issuance of the new policy. This question is answered in the negative * * *. Judgment reversed.

II

IS THE REQUIREMENT THAT THE APPLICANT SUBMIT "PROOF SATISFACTORY TO THE DIRECTOR SHOWING * * * THAT THE APPLICANT IS NOT TOTALLY AND PERMANENTLY DISABLED" SATISFIED MERELY BY PROVING IN THE DISTRICT COURT THAT HE WAS NOT SO DISABLED?

The pleadings show that, after considering the application of this petitioner, the Director of the Bureau rejected the application for reinstatement. The petition alleges only that such action of the Director was erroneous and contrary to the terms of the statute (R. 5) and the District Court went no further than to say (R. 47):

> It seems to me that the action of the Director in grading this man as permanently and totally disabled was erroneous. Of course, the proof submitted to him may have been different from that before this court.

There is no allegation or finding as to what proof was submitted to the Director. It does appear, inferentially, that the proof was not actually "satisfactory to the Director," and there is no finding

that his action was wholly unsupported by evidence or that there was proof which should have been satisfactory to a reasonable man in the position of the Director.

We submit that the language "proof satisfactory to the Director" means something. This occurs only in regard to proof "showing the service origin of the disability or aggravation thereof and that the applicant is not totally and permanently disabled." There is no similar requirement as to proof of any other matter. It seems probable that Congress intended to vest the Director with power to determine the weight of evidence as to these matters and that it did not intend to allow the District Court to try out these issues *de novo* without paying any attention to the evidence which was submitted to the Director and without giving any weight to his determination.

If the practice followed by the District Court in this case is upheld, it seems likely that the District Courts will be flooded with cases involving this issue.

III

WERE THE ALLEGATIONS IN THE PETITION IN THE DISTRICT COURT SUFFICIENT TO INVOKE THE JURISDICTION OF THE DISTRICT COURT?

As the Circuit Court of Appeals said in the instant case (R. 84):

> It has been repeatedly determined that the grant of power given to the Director by Section 2 of the Act of 1921, to decide

> questions of fact, cannot be challenged, unless the controversy falls within Section 19 of the Act of 1924, or unless such decision is "wholly without evidential support or wholly dependent upon a question of law or clearly arbitrary or capricious" (*United States* v. *Williams,* decided January 2, 1929; *Silberschein* v. *United States,* 266 U. S. 221, 225; *Armstrong* v. *United States,* 16 Fed. (2d) 387, 389, this court; *United States* v. *Edwards,* 23 Fed. (2d) 477, 479, this court). There is no allegation in this petition that the action of the Director upon this matter was wholly unsupported by evidence or wholly dependent upon a question of law or clearly arbitrary and capricious. The only allegation is that the Director acted "erroneously and contrary to the terms of the War Risk Insurance Act and amendments thereto."

The petitioner in his brief, after conceding for the sake of argument that the petition does not comply with the requirements laid down by this Court in the *Silberschein case, supra,* asserts (p. 13):

> It will be conceded, we believe, that the court had general jurisdiction of the court [parties] and subject matter

and that the defect, within the rule announced in the *Silberschein case, supra,* is cured by the respondent's

> failure to make timely objection under the rule thus announced by the Circuit Court for

> the Eighth Circuit in *U. S.* v. *Edwards,* 23 Fed. (2d) 477, 479 * * *.

We submit that neither the *Edwards case* nor *Beyer* v. *LeFevre,* 186 U. S. 114, also cited by petitioner, has application to the instant case.

In the *Edwards case* the plaintiff sought recovery under a contract of insurance by reason of alleged mental incompetency existing within the period for which premiums had been paid and endeavored to have the court determine independently whether such incompetency existed. The Government contended that such rating of incompetency must be made, if at all, by the Bureau under the provisions of Section 306 of the World War Veterans' Act (43 Stat. 626), and not by the court. The trial court decided against the contention of the Government and entered judgment for the plaintiff. The Circuit Court of Appeals, after determining that the contention of the Government below was correct, sustained the judgment for the plaintiff because counsel for the Government in the trial had waived for the purposes of that case the necessity of obtaining a rating of incompetency by the Bureau.

In *Beyer* v. *LeFevre,* after the jurisdiction of the trial court had been challenged, and before the court had ruled thereon, the parties stipulated as follows (p. 116):

> It is hereby stipulated by and between the parties to this cause * * * that the court may make an order certifying certain issues, to be named in said order, to be tried

> by a jury of the Circuit Court, and that the findings by said jury upon said issues shall be returned to this court; whereupon a decree shall be entered in accordance with said findings * * *.

We submit that no such situation exists in the present case. The trial court did not have general jurisdiction of the subject matter.

CONCLUSION

No conflict of decisions upon the points raised has been shown, and we respectfully submit that the petition should be denied.

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DECEMBER, 1929.

U. S. GOVERNMENT PRINTING OFFICE: 1929

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BRIEF FOR THE UNITED STATES

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JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 21, 1929. (R. 74.) Petition for rehearing was denied May 28, 1929. (R. 75.)

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